



BILLING CODE: 4510-29-P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Prohibited Transaction Exemption 1986-128 For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, “Employee Retirement Income Security Act Prohibited Transaction Exemption 1986-128 For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers,” to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq. Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201412-1210-005 (this link will only become active on the day following publication of this notice) or by contacting

Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-EBSA, Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email:

OIRA_submission@omb.eop.gov. Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue, N.W., Washington, D.C. 20210; or by email: DOL_PRA_PUBLIC@dol.gov.

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202-693-4129, TTY 202-693-8064, (these are not toll-free numbers) or by email at DOL_PRA_PUBLIC@dol.gov.

AUTHORITY: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the information collection requirements in Employee Retirement Income Security Act (ERISA) Prohibited Transaction Exemption (PTE) 1986-128, which applies to securities transactions involving an employee benefit plan and a broker-dealer. PTE 1986-128 permits a person who serves as fiduciary for an employee benefit plan to effect or execute securities transactions on behalf of the employee benefit plan. The PTE also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to

recapture brokerage commissions for the benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by insurance companies. This exemption provides relief from certain prohibitions in ERISA section 406(b) (see 29 U.S.C. 1106(b)) and from the taxes imposed by Internal Revenue Code of 1986 (Code) section 4975(a) and (b) by reason of Code section 4975(c)(1)(E) or (F) (see 26 U.S.C. 4975(a), (b), and (c)(1)(E) and (F)).

PTE 1986-128 section III imposes the following information collection requirements on a fiduciary of an employee benefit plan that effects or executes securities transactions (i.e., a broker-dealer) and the independent plan fiduciary authorizing the plan to engage in the transactions with the broker-dealer (i.e., an authorizing fiduciary) under the conditions contained in the exemption: (1) the authorizing plan fiduciary must provide the broker-dealer with an advance written authorization for the transactions; (2) the broker-dealer must provide the authorizing fiduciary with information necessary to determine whether an authorization should be made, including a copy of the exemption, a form for termination, a description of the broker-dealer's brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing fiduciary requests; (3) the broker-dealer must provide the authorizing fiduciary with a termination form, at least annually, explaining that the authorization is terminable at will, without penalty to the plan, and that failure to return the form will result in continued authorization for the broker-dealer to engage in securities transactions on behalf of the plan; (4) the broker-dealer must provide the authorizing fiduciary with either (a) a confirmation slip for each individual securities transaction within ten (10) days of the transaction containing the information described in regulations 17 CFR 240.10b-10, or

(b) a quarterly report containing certain financial information including the total of all transaction-related charges incurred by the plan; (5) the broker-dealer must provide the authorizing fiduciary with an annual summary of the confirmation slips or quarterly reports, containing all security transaction-related charges, the brokerage placement practices (if changed), and a portfolio turnover ratio; and (6) a broker-dealer who is a discretionary plan trustee must provide the authorizing fiduciary with an annual report showing separately the commissions paid to affiliated brokers and non-affiliated brokers, on both a total dollar basis and a cents-per-share basis. These requirements are designed as appropriate safeguards to ensure protection of plan assets involved in the transactions, which, in the absence of the class exemption, would not be permitted. These safeguards rely on the prior authorization and monitoring of the broker-fiduciary's activities by a second plan fiduciary that is independent of the first. This information collection is authorized by ERISA section 408. See 29 U.S.C. 1108.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210-0059.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on January 31,

2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the Federal Register on October 15, 2014 (79 FR 61903).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the ADDRESSES section within thirty (30) days of publication of this notice in the Federal Register. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210-0059. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL-EBSA.

Title of Collection: Employee Retirement Income Security Act Prohibited Transaction Exemption 1986-128 For Securities Transactions Involving Employee Benefit Plans and Broker-Dealers.

OMB Control Number: 1210-0059.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 17,800.

Total Estimated Number of Responses: 1,300,000.

Total Estimated Annual Time Burden: 35,000 hours.

Total Estimated Annual Other Costs Burden: \$1,100,000.

Dated: January 21, 2015.

Michel Smyth,

Departmental Clearance Officer.

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